IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3707 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HASMUKHBHAI G BALDHA

Versus

G S R T C

Appearance:

1. Special Civil Application No. 3707 of 1992

MR MUKESH H RATHOD for Petitioner

MR HS MUNSHAW for Respondent

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 24/02/2003

ORAL JUDGEMENT

In instant petition, which is filed under Article 227 of the Constitution, the petitioner has challenged

that part of Award dated June 11, 1990, rendered by the Labour Court, Rajkot, in Reference (LCR) No.678/86, by which he has been denied back wages while directing the respondent i.e. Gujarat State Road Transport Corporation to include his name in the waiting list.

2. The petitioner was employed as Badli Worker on May 20, 1980 at Una Depot and his name was included in the waiting list of conductors. He was placed in time-scale with effect from June 6, 1981, and was directed to report at Una Depot in November, 1981. The petitioner did not report for duty at Una Depot. Therefore, the respondent-Corporation had served a notice dated December 6, 1981 calling upon him to report for duty at Una Depot. In spite of receipt of notice, the petitioner did not report for duty at Una Depot. The Corporation, therefore, by an order dated December 29, 1981 removed his name from the waiting list. According to the petitioner, removal of his name from the waiting list amounted to retrenchment and that the retrenchment was contrary to the provisions of the Industrial Disputes Act. He, therefore, raised a dispute regarding validity of his removal from service in the year 1986. On failure of conciliation proceeding, the dispute was referred to the Labour Court, Rajkot for adjudication,where it was numbered as Reference (LCR) No.678/86. The petitioner had submitted statement of claim at Exh.3, to which reply was filed by the respondent at Exh.4. No oral evidence was led by the parties to the Reference, and the matter was decided on the basis of documents produced by the respondent-Corporation which were admitted in evidence on the basis of purshis submitted on behalf of the petitioner. On consideration of the documents produced before it, the Labour Court deduced that in spite of receipt of notice dated December 6, 1981, the petitioner had failed to report for duty at Una Depot and, therefore, his name was removed from the waiting list vide order dated December 23, 1981. The explanation given by the petitioner that he was suffering from piles and, therefore,could not report for duty in time, was not accepted by the Labour Court, as no evidence could be led by the petitioner to substantiate the same. However, the Labour Court was of the opinion that before removing the name of the petitioner from the waiting list, the respondent-Corporation should have held departmental inquiry against the petitioner and that having not been done, the action of the respondent-Corporation of removing the name of the petitioner from the waiting list of conductors was liable to be set aside. The Labour Court noted that before he was employed on permanent basis, the petitioner was discharging duties as a Badli

worker and that as he had failed to report for duty, the petitioner was not entitled to back wages. In view of the above referred to conclusions, the Labour Court by Award dated June 11, 1990 has directed the respondent-Corporation to reinstate the petitioner in service, but the petitioner is denied back wages, which has given rise to the present petition.

3. Mr.Prabhakar Upadhyay, learned advocate, for Mr.Mukesh H.Rathod, learned advocate of the petitioner, submitted that as the action of the respondent-Corporation in removing the name of the petitioner from waiting list of conductors was found to be illegal, the Labour Court should have granted consequential relief of back wages while directing the respondent-Corporation to include the name of the petitioner in the waiting list of conductors and, therefore, the petition deserves to be accepted. What was argued was that the action of the respondent-Corporation of removing the name of the petitioner from the waiting list of conductors was contrary to the provisions of the Industrial Disputes Act, 1947 and, therefore, back wages should have been awarded by the Labour Court. Mr. Hemant Munshaw, learned advocate of the respondent, submitted that the petitioner had failed to report for duty at Una Depot in spite of receipt of notice dated December 6, 1981, and as he has failed to lead any evidence to establish that he was not gainfully employed during the interregnum period, the petitioner is not entitled to back wages. What was emphasised was that though the name of the petitioner was removed from the waiting list of conductors on December 23, 1981, the petitioner had raised dispute in the year 1986 i.e. after a period of five years and as no explanation is offered by the petitioner for delay in raising the dispute, instant petition claiming back wages should be dismissed.

4. I have considered the submissions advanced at the Bar and the documents forming part of the petition. From the record of the petition, it is evident that by an order dated December 23, 1981, the respondent-Corporation had removed the name of the petitioner from the waiting list of conductors. For the first time the said action was challenged by raising dispute in the year 1986. The petitioner has not offered any explanation as to why the dispute was raised after a period of five years. Delay, in the circumstances, would disentitle the petitioner from claiming discretionary relief of back wages. Further, in the month of November, 1981, the petitioner was transferred to Una Depot, but the petitioner had

failed to report at the said Depot and, therefore, a notice dated December 6, 1981 was served calling upon him to report for duty at Una Depot, but the petitioner had failed to report for duty at Una Depot and, therefore, the respondent-Corporation was obliged to pass an order dated December 23, 1981 removing his name from the waiting list of conductors. His explanation that he could not report for duty at Una Depot because he was suffering from piles has not been accepted by the Labour Court. Moreover, no evidence was led by the petitioner to establish that during the interregnum period he was not gainfully employed. In Hindustan Motors Ltd. v. Tapan Kumar Bhattacharya and another, AIR 2002 SCW 3008, the Supreme Court has held that the relief of full back wages need not follow as a matter of course and the Court has to exercise discretion having regard to the facts and circumstances emerging from the case. In view of the tale-telling circumstances, which have been enumerated hereinabove, the Court is of the opinion that the Labour Court did not commit any error in not awarding back wages to the petitioner so as to warrant interference of this Court in instant petition, which is filed under Article 227 of the Constitution. The discretion exercised by the Labour Court in denying back wages to the petitioner, is neither arbitrary nor erroneous. Therefore, the petition is liable to be dismissed.

For the foregoing reasons, the petition fails and is dismissed. Rule is discharged. There shall be no orders as to costs.

(J.M.Panchal,J.)

(patel)